

EXHIBIT 13

1
2 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

3 -----X
SHORELINE AVIATION, INC.,

4
5 PLAINTIFF,

6 -against-

Case No.:
2:20-cv-02161
JMA-SIL

7
8 CYNTHIA L. HERBST, SOUND AIRCRAFT
9 FLIGHT ENTERPRISES, INC., RYAN A. PILLA,
BLADE URBAN AIR MOBILITY, INC. a/k/a
10 FLY BLADE, INC., MELISSA TOMKIEL and
ROBERT S. WIESENTHAL,

11 DEFENDANTS.

12 -----X
13 DATE: March 14, 2022
14 TIME: 10:00 A.M

15
16
17 DEPOSITION of MIKE MIGLIORE,
18 CAPE AIR, taken by the respective parties,
19 pursuant to a Court Order and to the
20 Federal Rules of Civil Procedure, held via
21 Veritext Virtual Services, before Edith
22 Tirado-Plaza, a Notary Public of the State
23 of New York.

1 M. MIGLIORE

2 you not to I'm going to ask you to respond
3 to the question notwithstanding any
4 objection; is that clear?

5 A. Yes.

6 Q. What did you do to prepare
7 yourself to testify here today?

8 MR. MAGUSON: I'm going to
9 instruct the witness not to divulge
10 any communication with counsel.
11 Other than what you may answer.

12 A. I spoke with our counsel.

13 Q. How many times did you speak
14 with your counsel?

15 A. Several times.

16 Q. Did you re view any documents
17 in connection with today's deposition?

18 A. Yes, I did.

19 Q. Did any documents refresh your
20 recollection as to the events that took
21 place?

22 A. Yes, they did.

23 Q. Can you tell me which documents
24 those were?

25 A. You'll have to show me. There

1 M. MIGLIORE

2 are several documents that were reviewed.

3 Q. You also said that you are
4 testifying in a capacity of behalf of a
5 third-party in this case. Do you
6 understand that?

7 A. Yes, I do.

8 Q. I'm going to offer that party
9 as Cape Air; is that clear?

10 A. Yes.

11 Q. Cape Air it also goes by other
12 name; correct?

13 A. Yes.

14 Q. What's the other name?

15 A. Hyannis Air Surface Inc.

16 Q. So we're on the same page when
17 I refer to Cape Air I'm also referring to
18 Hyannis?

19 A. Yes.

20 Q. You are currently employed by
21 Cape Air?

22 A. Yes.

23 Q. What role do you have at Cape
24 Air?

25 A. I'm the chief financial officer

1 M. MIGLIORE

2 of Cape Air.

3 Q. How long have you worked for
4 Cape Air?

5 A. 11 plus years.

6 Q. What role have you had over the
7 course of your 11 plus years you've been at
8 Cape Air?

9 A. I've always been the chief
10 financial officer.

11 Q. Can you tell us generally the
12 business of Cape Air?

13 A. We are a commercial line. 135
14 scheduled service. We fly to 40 different
15 destinations in the US and in the
16 Caribbean.

17 Q. I'm going ask you some
18 questions today about a transaction between
19 the plaintiff Shoreline Aviation and Cape
20 Air. Now, did you have any involvement in
21 that transaction?

22 A. Yes, I did.

23 Q. Can you generally describe what
24 type of role you played in the transaction?

25 MR. MAGNUSON: Objection to

1 M. MIGLIORE

2 form.

3 MR. KRIEGSMAN: Objection to
4 form.

5 A. I was involved with analyzing
6 the business of Shoreline and along with
7 the CEO and president at the time in the
8 doing the due diligence on the business and
9 putting together the offer and also working
10 with our attorneys to put together the
11 documents.

12 Q. Who else, to your knowledge,
13 was involved in the transaction on Cape Air
14 side?

15 A. The CEO Dan Wolf and Linda
16 Markham the president (phonetic).

17 Q. What roles did they play in the
18 transaction?

19 A. Very similar roles. The three
20 of us would go down to Shoreline and
21 discuss that with both the owners of
22 Shoreline and Shoreline would come here to
23 discuss the transaction, the three of us
24 would meet with them.

25 Q. To your knowledge, who

1 M. MIGLIORE

2 participated on the Shoreline part of the
3 transaction?

4 A. It was John Kelly and Andrea.

5 Q. Is that Andrea Collingwood?

6 A. Yes, sorry, yes.

7 Q. Was John Kelly the former
8 principal of Shoreline Aviation?

9 A. Yes, he was.

10 Q. He's now deceased; is that
11 correct?

12 A. That is correct.

13 Q. Do you know what role Miss
14 Collingwood had at Shoreline?

15 A. From what I recall she was the
16 VP of marketing.

17 Q. She was also Mr. Kelly's wife;
18 is that right?

19 A. That is correct.

20 Q. They were the two shareholders
21 of Shoreline; is that right?

22 A. That is correct.

23 Q. Now, you mentioned meetings
24 with Shoreline leading up to the
25 transaction. Do you recall approximately

1 M. MIGLIORE

2 how many meetings there were?

3 A. Numerous. I couldn't even
4 guess.

5 Q. Do you recall when discussions
6 began between Shoreline and Cape Air about
7 a potential transaction?

8 A. Discussions began in the fall
9 of 2017.

10 Q. Did you speak directly with
11 anyone at Shoreline about the transaction?

12 A. Yes.

13 Q. Who did you speak with?

14 A. It would be both John and
15 Andrea.

16 Q. Is that during the meetings or
17 also separate conversations?

18 A. It would have been both during
19 the meetings, separate conversations and
20 through correspondence over e-mail.

21 Q. Putting aside the meetings that
22 we talked about a minute ago, do you have
23 any idea how many conversations you had
24 with Shoreline about the transaction?

25 A. Once again numerous

1 M. MIGLIORE

2 screen so you can look at the exhibit
3 with me. I've also provided a copy
4 of the exhibits to your attorneys so
5 they have a copy as well.

6 (Whereupon, a document entitled
7 NDA was marked as Exhibit 1 for
8 identification as of this date by the
9 Reporter.)

10 MR. KRIEGSMAN: You didn't give
11 me one. Was that intentional?

12 MR. SKIBELL: You can see as I
13 enter it. You'll have it the same as
14 everyone else. If you want I will
15 separately e-mail you the exhibits so
16 you have a copy.

17 MR. KRIEGSMAN: That would be
18 great, thank you.

19 Q. You'll see this is a document
20 that was produced in this litigation by
21 Shoreline to us and you'll see it bears a
22 bates stamp number of SAI005163. I'll show
23 you it goes down to SAI005170. I'm only
24 going to ask you about the top of the
25 document. You'll see it's a November 8,

1 M. MIGLIORE

2 2017 e-mail from you to John Kelly. Does
3 this refresh your recollection that the NDA
4 was entered into on or around November of
5 2017?

6 A. Yes, it does.

7 Q. I'm going to stop sharing.

8 Now, when the parties entered
9 into a nondisclosure agreement, did
10 Shoreline provide information to Cape Air
11 about its operations?

12 A. Yes, they did.

13 Q. How was that information
14 provided to Cape Air?

15 A. Typically it was through
16 e-mail.

17 Q. Did you request particular
18 information from Shoreline?

19 A. Yes, we provided a whole due
20 diligence list.

21 Q. Was that that due diligence
22 list after the NDA was entered into?

23 A. Yes.

24 Q. Do you recall asking for copies
25 of contracts from Shoreline in connection

1 M. MIGLIORE

2 with the due diligence?

3 A. I have not reviewed that due
4 diligence list we provided but typically we
5 would ask for contracts, yes.

6 Q. Do you know if you ever
7 received a copy of a contract between Sound
8 and Shoreline?

9 A. I do not recall.

10 Q. Do you recall what type of
11 other information you received from
12 Shoreline at this time?

13 A. Could you please restate that?

14 Q. Do you recall what other
15 information you received from Shoreline at
16 this time? To be clear I'm asking you
17 about the time after the NDA had been
18 signed but before any other contract terms
19 had been agreed to?

20 MR. KRIEGSMAN: Objection to
21 form.

22 A. We received multiple documents
23 throughout the years so are you asking for
24 a specific time period?

25 Q. Yes, I'm asking after the NDA

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M. MIGLIORE

was signed but before any sort of letter of intent or any agreements were entered into. That's the period of time I'm asking you about.

A. Reid, I don't recall.

Q. Now, after the parties entered into a nondisclosure agreement but before any contract was entered into, was there discussion of what a merger would look like between Shoreline and Cape Air?

A. Yes, there were initial discussions once we signed an NDA.

Q. What was discussed?

A. The initial discussion was that the owners of Shoreline wanted to do a ESOP prior to a transaction between Shoreline and Cape Air and then Cape Air would purchase Shoreline, the business of Shoreline.

Q. What's an ESOP? What is that exactly?

A. I'm sorry, can you restate?

MR. KRIEGSMAN: Objection to form.

1 M. MIGLIORE

2 Q. You referred to an ESOP, can
3 you tell me what that is?

4 MR. KRIEGSMAN: Objection.

5 A. It's an employee stock
6 ownership plan.

7 Q. At this time did Cape Air have
8 a plan for integrating Shoreline into its
9 business?

10 A. No.

11 Q. At this time did Cape Air have
12 its own booking services?

13 A. Yes.

14 Q. And did Cape Air have a website
15 for booking flights?

16 A. Yes.

17 Q. Did Cape Air have booking
18 agents?

19 A. Can you clarify?

20 Q. Did Cape Air have individuals
21 that worked as booking agents to book
22 flights for customers?

23 MR. KRIEGSMAN: Objection to
24 form.

25 A. I don't understand just because

1 M. MIGLIORE

2 of how our business works. We don't call
3 them booking agents. I just want to make
4 sure I understand your question.

5 Q. How does Cape Air's at this
6 time booking services operate?

7 MR. KRIEGSMAN: Objection.

8 A. Like any normal airline that
9 you book on. So, we have a reservations
10 department, you can book on our website,
11 you can call our reservation agents and
12 book tickets. You can also call a travel
13 agent and book through them on us.

14 Q. At this time did you also have
15 customer service agents?

16 A. Yes, customer service agents
17 and reservation agents are one the and same
18 here.

19 Q. If there had been a merger
20 would Cape have had any need for Shoreline
21 to have an independent booking agent?

22 MR. KRIEGSMAN: Objection to
23 form.

24 A. After the merger was the
25 question?

1 M. MIGLIORE

2 MR. KRIEGSMAN: Objection to
3 form. I think that first part of the
4 question might have been missed.

5 Q. Did you understand the
6 question?

7 MR. KRIEGSMAN: The same thing
8 happened again where we're missing
9 you in the beginning.

10 MR. SKIBELL: Let's take a
11 break and I will call Veritext and
12 see if there's a way to address this
13 issue. I think we should take a
14 15-minute break if that's okay.

15 (Whereupon, a brief a 15-minute
16 break was taken.)

17 Q. When we were going off the
18 record we were talking about how Shoreline
19 might be integrated into Cape Air. Do you
20 recall that?

21 A. I do.

22 Q. Now, did you have any
23 discussions with Shoreline about what it
24 was planning to do post merger?

25 A. Yes, we had lots of

1 M. MIGLIORE

2 discussions.

3 Q. Was there any discussion about
4 whether or not they would terminate any
5 sort of booking arrangement they had with
6 Sound Aircraft?

7 A. Are you asking if they were
8 going to terminate --

9 MR. KRIEGSMAN: Note my
10 objection for the record.

11 A. Were you asking if they were
12 going to terminate the contract with Sound?

13 Q. I'm asking if they were going
14 to terminate any kind of business
15 relationship with Sound following the
16 merger with Cape Air.

17 A. I don't recall any specifics.

18 Q. Do you recall generally what
19 Shoreline was planning to do with its
20 booking services post merger?

21 MR. KRIEGSMAN: Objection to
22 form.

23 A. I don't recall.

24 Q. Did there come a time when the
25 parties entered into a letter of intent?

1 M. MIGLIORE

2 A. Yes, there was.

3 Q. Do you recall approximately
4 when that was?

5 A. Yes, it was March of 2018.

6 Q. Were there economic terms set
7 forth in the letter of intent?

8 A. Yes, there were.

9 Q. Was it planned to be an
10 approximately a five million dollar
11 acquisition by Cape Air?

12 A. That was a part of the letter
13 of intent, yes.

14 Q. Do you recall how the economic
15 terms of the transaction were arrived?

16 MR. KRIEGSMAN: Objection to
17 form.

18 A. Yes.

19 Q. Can you explain to us how the
20 economic terms of the transaction as set
21 forth in the letter of intent were arrived?

22 MR. KRIEGSMAN: Objection.

23 A. Yes, there was a meeting in New
24 Haven at Shoreline's business where Cape
25 Air and Shoreline sat down and discussed

1 M. MIGLIORE

2 the economic terms of the deal.

3 Q. Who was present for this
4 meeting?

5 A. Myself, Dan Wolf our CEO, Linda
6 Markham our president, John Kelly and
7 Andrea.

8 Q. Do you recall if anyone took
9 notes at the meeting?

10 A. Yes.

11 Q. Who took notes at the meeting
12 to your recollection?

13 A. From my recollection there was
14 someone if the Cape Air side that was
15 jotting notes down and also someone from
16 Shoreline that was jotting notes down.

17 Q. Do you know if those notes are
18 still available somewhere?

19 A. I do not recall.

20 Q. In that meeting how did the
21 parties arrive at the economic terms of the
22 deal?

23 A. I can tell you how Cape Air
24 arrived at agreeing to that.

25 Q. How did Cape Air arrive at

1 M. MIGLIORE

2 Q. The three million dollars would
3 have been paid to Shoreline the entity?

4 A. Yes.

5 Q. And one of the debts that would
6 have been assumed the ESOP?

7 A. That was a consideration at the
8 time. It was also another debt that they
9 -- further down in the document that it
10 talks about.

11 Q. Is that other debt the loans
12 from the aircraft?

13 A. Yes.

14 Q. Was that approximately 1.4
15 million was due on loans from the aircraft?

16 A. Yes, that is correct.

17 Q. So, as part the of the deal
18 what Cape Air have been assuming the
19 liability for the loans in the aircraft?

20 A. Yes.

21 Q. If we put those together the
22 consideration for the deal would have been
23 approximately 6.4 million?

24 A. That is correct.

25 Q. Do you see where it says C?

1 M. MIGLIORE

2 A. Yes.

3 Q. And you see there's a reference
4 to the ESOP not exceeding 1.5 million?

5 A. Yes.

6 Q. Do you have an understanding as
7 to why the parties agreed to the ESOP could
8 not exceed 1.5 million?

9 MR. KRIEGSMAN: Objection to
10 form.

11 A. I do not recall.

12 Q. If you look at E there's a
13 reference to employment contracts. Do you
14 see that?

15 A. I do.

16 Q. And you'll see there's a
17 reference to a salary for Mr. Kelly. Do
18 you see that?

19 A. Yes, I did.

20 Q. Also there's a reference to a
21 salary for Miss Collingwood?

22 A. Yes.

23 Q. As written here it says TBD.
24 Does that mean to be determined?

25 A. Yes, it does.

1 M. MIGLIORE

2 Q. At this time did Cape Air have
3 have a general understanding of what it was
4 going to pay for Mr. Kelly for his
5 employment?

6 A. I think, yes, in general, but
7 it wasn't specifically kind of discussed
8 but we knew what John was making at -- John
9 and Andrea were making at Shoreline.

10 Q. What were you generally
11 planning to pay Mr. Kelly and Miss
12 Collingwood in connection with their
13 employment agreements?

14 A. I don't recall specifically but
15 if you look at the final agreement it was
16 in the general range of what we ended up
17 agreeing to with John and Andrea.

18 Q. So, what was contemplated here
19 was similar to what was put forth in the
20 final deal documents in terms of their
21 compensation?

22 A. That is correct.

23 Q. So, that would have been an
24 additional consideration to Mr. Kelly and
25 Miss Collingwood in connection with the

1 M. MIGLIORE

2 transaction?

3 MR. KRIEGSMAN: Objection to
4 form.

5 A. Yes, it was always a part of
6 the deal.

7 Q. Do you see there's a reference
8 to a noncompetition agreement.

9 A. Yes.

10 Q. You see in the second sentence
11 there it says agreement to be conditioned
12 upon and subject to buyer's performance
13 under deferred consideration payment
14 obligation and employment agreement.

15 Was it Cape Air's understanding
16 that the two million dollars would be
17 contingent upon Mr. Kelly and Miss
18 Collingwood agreeing to a noncompete?

19 MR KRIEGSMAN: Objection to
20 form.

21 A. That is correct.

22 Q. If you H is third-party consent
23 and approvals. At this time did Cape Air
24 have an understanding of who needed to
25 consent or approve to the transaction?

1 M. MIGLIORE

2 A. I'm reading it. Hang on.

3 I don't recall.

4 Q. You see G, it says due
5 diligence review. Does this set forth the
6 information that Cape Air was requesting in
7 connection with its due diligence on its
8 transaction?

9 A. Yes, that was the general due
10 diligence list and then we gave a very
11 specific due diligence list we requested
12 after this.

13 Q. You see there's a reference to
14 contracts in due diligence. Was one of the
15 things that was requested by Cape Air the
16 contracts of the company?

17 A. Yes.

18 Q. I'm going to pull this document
19 down and I'm going to go to another
20 document.

21 MR. SKIBELL: This will be
22 Exhibit Number 3.

23 (Whereupon, an e-mail from Paul
24 Eckland was marked as Exhibit 3 for
25 identification as of this date by the

1 M. MIGLIORE

2 response from Mr. Glassman. You're copied
3 on this response; correct?

4 A. Yes.

5 Q. You'll see Mr. Eckland
6 indicates in the first sentence that
7 there's one way that the structure -- that
8 the transaction could be structured; is
9 that right?

10 A. Yes.

11 Q. He runs through seven steps of
12 how the transaction would be structured; is
13 that right?

14 A. Yes, it is.

15 Q. If you look at the paragraph
16 after the seven steps he indicates there's
17 other ways of structuring the transaction;
18 is that correct?

19 A. That is correct.

20 Q. At this time I'm asking for
21 Cape Air's perspective that had parties
22 agreed on a form of a transaction involving
23 ESOP?

24 A. No, not at all.

25 Q. You see there's a reference to

1 M. MIGLIORE

2 section 1042 and the tax benefits for the
3 Kellys. Do you see that?

4 A. Can you point out the
5 specifically where you're referring to?

6 Q. I'll read it.

7 A. I see it.

8 Q. Was this Cape Air's
9 understanding that the ESOP was primarily
10 to further the tax benefits for Mr. Kelly
11 and Miss Collingwood?

12 A. Creation.

13 MR. KRIEGSMAN: Objection to
14 form.

15 A. I think that was a significant
16 reason for the transaction being structured
17 this way.

18 Q. You see there's a reference to
19 the next sentence Mr. Glassman writes
20 importantly please understand I do not know
21 what final outcome is acceptable to the
22 Kellys /EUS with respect to their continued
23 holdings and/or note from Hyannis. Do you
24 see that?

25 A. I do.

1 M. MIGLIORE

2 Q. Do you have any understanding
3 of what Mr. Glassman is referring to talks
4 about holding shares and/or a note?

5 A. I don't recall.

6 Q. Do you know if there was ever a
7 resolution reached as to whether or not Mr.
8 Kelly and Miss Collingwood would hold
9 shares in Cape Air following a transaction
10 involving the ESOP?

11 MR. KRIEGSMAN: Objection to
12 form.

13 A. I don't recall that being one
14 of the structures.

15 Q. Do you recall Mr. Kelly and
16 Miss Collingwood ever agreeing to hold a
17 note from Cape Air in connection with an
18 ESOP version of the transaction?

19 A. I don't recall. There were
20 many conversations in regards to different
21 structures. That specific one I do not
22 recall.

23 Q. I'm going to go up to an e-mail
24 from Mr. Eckland. Do you see that?

25 A. Yes.

1 M. MIGLIORE

2 Reporter.)

3 Q. This is an exhibit that was
4 produced by Shoreline in the case. It
5 bears the bates stamp SAI007548 to 550. To
6 be clear you're not on this e-mail. So,
7 I'm going to ask you about some statements
8 made by John Kelly in this e-mail; okay?

9 A. Okay.

10 Q. You'll see in this e-mail it
11 was sent on or around October 15, 2018 so
12 this was after the e-mail we looked at a
13 moment ago; is that correct?

14 A. Yes, it is.

15 Q. He indicates that the lawsuit
16 filed by Sound Aircraft Light Enterprises
17 is creating some complications; is that
18 right?

19 A. That's what it states there.

20 Q. In addition to the lawsuit
21 filed by Sound referenced there, am I
22 correct hat parties had not agreed on a
23 structure of the ESOP version of the
24 transaction?

25 A. At this time?

1 M. MIGLIORE

2 Q. Yes.

3 A. Yes.

4 Q. Beyond the lawsuit there were
5 other issues associated with an ESOP
6 version of the transaction; is that right?

7 A. Yes.

8 Q. Did Cape Air have a preference
9 for a different version of the transaction
10 at this time?

11 MR. KRIEGSMAN: Objection to
12 form.

13 A. Yes, at this time we really
14 wanted to move forward with an asset
15 purchase.

16 Q. Can you tell us what reasons
17 Cape Air wanted to move forward in the
18 asset purchase?

19 A. There were several reasons.
20 One is as you stated the lawsuits
21 complicated the deal. They were not moving
22 forward with the ESOP for various reasons
23 and we liked the idea of having an ESOP
24 because we were also an ESOP company and
25 also for lack of a better word the

1 M. MIGLIORE

2 negotiations were dragging on for quite
3 some time now. We wanted to close to move
4 on with our business plan.

5 Q. Were there reasons that Cape
6 Air preferred an asset purchase that went
7 beyond the lawsuit filed by Sound?

8 A. Yes.

9 Q. One of those reasons was that
10 there was no agreement between the parties
11 on how an ESOP version of the transaction
12 would be structured?

13 A. That's correct.

14 Q. So, the asset purchase of this
15 transaction was going to be easier to Cape
16 Air's perspective?

17 MR. KRIEGSMAN: Objection to
18 form.

19 A. Yes.

20 Q. If there had been no lawsuit
21 filed by Sound Aircraft would Cape Air at
22 this time still preferred a non merger
23 version of the transaction?

24 MR. KRIEGSMAN: Objection.

25 Calls for speculation.

1 M. MIGLIORE

2 A. Are you asking if we would have
3 preferred an asset deal anyway if the
4 litigation wasn't there?

5 Q. Yes.

6 A. Yes, it's always easier to do
7 an asset purchase rather than a stock
8 purchase of a company.

9 Q. If you look at the second
10 paragraph do you see he writes while Cape
11 Air is still willing to do the ESOP stock
12 purchase transaction they're worried about
13 the timing. At this time was Cape Air still
14 willing to do an ESOP purchase of the
15 transaction?

16 A. Yes.

17 Q. There's a reference to timing.
18 Did Cape Air have a timing concern at this
19 time?

20 A. Yes, the timing issue was that
21 this was dragging on for months now,
22 possibly going on a year from initial
23 discussions. We really needed to get the
24 Boston New York up and running.

25 Q. Would Cape Air have waited to

1 M. MIGLIORE

2 do an ESOP version of the transaction if
3 they had been asked to wait?

4 MR. KRIEGSMAN: Objection.

5 A. That was never discussed but I
6 don't believe so.

7 Q. Did Shoreline also have a, to
8 you knowledge a concern about the delay at
9 this time?

10 MR. KRIEGSMAN: Objection.

11 A. I wouldn't have knowledge of
12 that specifically from John or Andrea.

13 Q. Did Mr. Kelly or Miss
14 Collingwood express they had concerns about
15 the delay at this time?

16 A. Yes, I think it was frustrating
17 everybody that that was going on as long as
18 it did because we had both parties that
19 were willing to do a deal.

20 Q. And you see in the last
21 paragraph you see that Mr. Kelly writes
22 that -- I think he's referring to Cape Air,
23 that they're willing to adjust the purchase
24 terms to ease some of that burden? Do you
25 see that?

1 M. MIGLIORE

2 A. The last sentence where it says
3 this is less attractive?

4 Q. Yes.

5 A. I see that. What was the
6 question?

7 Q. I was just pointing you to
8 that.

9 At this time had there been
10 discussions between Cape Air and Shoreline
11 about changes to the financial terms of the
12 transaction?

13 MR. KRIEGSMAN: Objection to
14 form.

15 A. Yes, there were -- to be clear
16 there were changes in the financial
17 structure throughout the discussions.

18 Q. At this time was Cape Air
19 willing to increase the purchase price to
20 offset the loss of the tax advantages on
21 the ESOP?

22 A. Cape Air was willing to pay --

23 MR. KRIEGSMAN: Note objection
24 to the form.

25 A. Cape air was willing to pay a

1 M. MIGLIORE

2 certain amount for the business whether it
3 was an asset sale or whether it was a stock
4 sale. We talked about and we know what
5 John and Andrea wanted to accomplish from
6 this. So, we adjusted accordingly.

7 Q. When you say adjusted
8 accordingly, does that mean you increased
9 what Cape Air was willing to offer to
10 offset the loss of the tax advantages from
11 the ESOP?

12 A. Cape Air didn't specifically --
13 wasn't specifically concerned about their
14 tax advantages or tax losses. If you look
15 at the original MOU or LOI in March it
16 wasn't materially different in our eyes
17 than the final agreement.

18 Q. But was Cape Air willing to pay
19 more to deal with any issues the Kellys
20 that with their taxes?

21 MR. KRIEGSMAN: Objection.

22 A. The deal structure changed so
23 we were back in negotiations and to get to
24 the final terms Cape Air wasn't necessarily
25 concerned with their tax advantages but ig

1 M. MIGLIORE

2 was during negotiations that we agreed to
3 the final financial terms of the agreement.

4 MR. SKIBELL: Let's take a
5 five-minute break.

6 (Whereupon, a brief break was
7 taken.)

8 MR. SKIBELL: I'm going to mark
9 this as Exhibit Number 6.

10 (Whereupon, an e-mail was
11 marked as Exhibit 6 for
12 identification as of this date by the
13 Reporter.)

14 Q. Do you see the bottom of this
15 e-mail? This is a document you'll see that
16 was produced by Cape Air in this case.
17 It's an e-mail from you to Mr. Magnuson and
18 others. Do you see that, Mr. Migliore?

19 A. I do.

20 Q. Did you see the subject is
21 Shoreline evaluation documentation? Do you
22 see that?

23 A. I do.

24 Q. A moment ago you were
25 testifying about how there were discussions

1 M. MIGLIORE

2 on the change version of the appeal.

3 A. Yes.

4 Q. The attachments to this are
5 they financial information relating to
6 chage structure of the deal?

7 MR. KRIEGSMAN: Objection to
8 form.

9 A. I think so. I would have to
10 see the actual document.

11 Q. There's also a reference to a
12 meeting on 11-29, do you see that?

13 A. Yes.

14 Q. Was there a meeting on or
15 around November 29th between the parties to
16 discuss the terms of an asset purchase?

17 A. Yes.

18 Q. And at that meeting was a final
19 version of the deal agreed to between the
20 parties?

21 A. If it wasn't on that date it
22 was very close to that date. I don't know
23 if it was specifically that date, but
24 they're very close because we went ahead
25 and did the actual purchase agreement

1 M. MIGLIORE

2 shortly after that.

3 Q. Before the parties met on
4 November 29, did John Kelly make a proposal
5 to Cape Air about a new version of the
6 transaction?

7 A. I don't recall specifically.
8 There were lots of discussion and lots of
9 different spread sheets going back and
10 forth. If you were to show me maybe it
11 would --

12 Q. Let's see if this refreshes
13 your recollection.

14 MR. SKIBELL: I'm going to
15 enter in what will be Exhibit 7.
16 (Whereupon, an e-mail dated
17 October 26, 2018 was marked as
18 Exhibit 7 for identification as of
19 this date by the Reporter.)

20 Q. It's eight on the list of
21 exhibits I provided. This is an e-mail
22 from Kelly to you dated October 26, 2018.

23 MR. KRIEGSMAN: You're marking
24 this as Exhibit 7 to the deposition?

25 MR. SKIBELL: Right.

1 M. MIGLIORE

2 Q. You see it has an attachment.

3 Do you see that?

4 A. Nothing is showing.

5 Q. I have to separate the
6 attachment. I want to be clear what I'm
7 doing. Let me now enter the attachment to
8 this particular e-mail so you have an it.

9 You see saw the e-mail?

10 A. This is the first time I'm
11 seeing that. This is the first time that
12 you're showing it to me.

13 Q. This will be marked as Exhibit
14 7. Is this an e-mail from John Kelly to
15 you on or about November 26, 2018?

16 A. Yes.

17 Q. You see it has an attachment to
18 this. Do you see that?

19 A. I do.

20 Q. I'm going to pull this down and
21 separately enter and provide you with the
22 attachment. It is an Excel file so that's
23 why I need to do it separately. This is
24 part of Exhibit 7.

25 Does this refresh your

1 M. MIGLIORE

2 the assets this was based on information
3 provided to you by Shoreline; is that
4 correct?

5 A. Yes, it's information received
6 during the due diligence throughout the
7 process.

8 Q. Did Shoreline ever provide you
9 estimated value on a customer list?

10 A. Not that I recall.

11 MR. SKIBELL: We're going to
12 the next exhibit. It should be
13 Exhibit 9.

14 (Whereupon, an e-mail from Mr.
15 Kelly was marked as Exhibit 9 for
16 identification as of this date by the
17 Reporter.)

18 MR. KRIEGSMAN: What you
19 pre-marked as 10 is going to be 9
20 now?

21 MR. SKIBELL: Yes.

22 Q. You'll see this is a document
23 that bears the bates stamp HAS0002267 and
24 this is an e-mail from Mr. Kelly to Mr.
25 Wolf, Miss Markham and to you; correct?

1 M. MIGLIORE

2 A. Yes, correct.

3 Q. Is he responding to 6.3 million
4 dollar proposal?

5 A. Yes.

6 Q. He's making a suggestion -- a
7 change to the employment terms for Miss
8 Collingwood and himself?

9 A. Yes.

10 Q. You will see an attachment here
11 labelled response to Cape Air offer. Do
12 you see that?

13 A. Yes.

14 Q. I'm going to show you that
15 document now which is part of this
16 document. You'll see if you look at the
17 top of this document there's a purchase
18 price. Do you see that?

19 A. I do.

20 Q. I'm going to go back to the
21 Exhibit 9. Is this a document you received
22 from Mr. Kelly?

23 A. Yes, it is.

24 Q. Does this have a slightly hire
25 purchase price for the transaction?

1 M. MIGLIORE

2 A. Yes, slightly higher than 6.3.

3 Q. That's based on changes to the
4 employment contract; is that correct?

5 MR. KRIEGSMAN: Objection to
6 form.

7 A. I don't think it was
8 specifically just for the employment
9 contracts.

10 Q. It's a counter that's
11 approximately almost \$75,000 higher; is
12 that right?

13 A. Correct.

14 Q. And did Cape Air accept that
15 offer?

16 A. It looks to be the final
17 document. I'm trying to recall the cash
18 payment at closing at 4.3. It looks to be
19 extremely close to the final documents.
20 There was a couple of moving parts but I
21 think it is the final deal structure, yes.

22 Q. I'm going to take this document
23 down.

24 MR. SKIBELL: I'm going to
25 enter one more document here. I'm

1 M. MIGLIORE

2 going to share my screen. This was a
3 document that was produced to us
4 without an attachment. I'm going to
5 direct you to the third tab.

6 (Whereupon, a spread sheet was
7 marked as Exhibit 10 for
8 identification as of this date by the
9 Reporter.)

10 Q. Or the second tab. You'll see
11 this is similar to a document we looked at
12 earlier but it adds a new proposal under
13 column K. Do you see that?

14 A. Yes.

15 Q. Is this something that you
16 wrote?

17 A. It's something I prepared,
18 yeah.

19 Q. Is this an evaluation of Mr.
20 Kelly's counter proposal?

21 A. Yes, it is.

22 Q. If you look at E that's the
23 original agreement?

24 A. That is correct.

25 Q. Under that version of the

1 M. MIGLIORE

2 original agreement Cape Air is paying
3 roughly \$600,000 more than it values the
4 assets of the company?

5 A. That is correct.

6 Q. Under Mr. Kelly's revised
7 proposal Cape Air is paying a little over
8 1.1 million over the value of the assets of
9 the company; is that correct?

10 A. Yes, that's correct.

11 Q. It's paying approximately
12 \$500,000 more in its estimation for this
13 transaction?

14 A. Yes.

15 Q. Was that to address the tax
16 issues that we had discussed earlier about
17 not using the ESOP?

18 A. It wasn't specifically to
19 address the tax issues. We were willing to
20 pay a certain amount that was in
21 negotiations to get to a price where we
22 were willing to pay. In John's point of
23 view maybe it was to address that, but we
24 were willing to pay a certain amount for
25 the business.

1 M. MIGLIORE

2 Q. In column E you see the
3 purchase price was five million dollars; is
4 that correct?

5 A. Yes.

6 Q. The purchase price in column K
7 is a little over 6.3 million dollars; is
8 that correct?

9 A. That's correct.

10 Q. So, you're paying roughly
11 1.3 million dollars more than under the
12 original agreement; right?

13 A. Yes.

14 Q. Would that extra money on the
15 purchase price be there to address in part
16 Mr. Kelly's tax concerns?

17 MR. KRIEGSMAN: Objection to
18 form.

19 A. I know one of their concerns
20 was the taxes. I don't specifically know.
21 We didn't specifically increase that to say
22 we're going to take care of John's tax
23 issues.

24 Q. In the negotiations related to
25 the higher purchase price of more than

1 M. MIGLIORE

2 6.3 million dollars, did Mr. Kelly use his
3 tax issues as a justification for a higher
4 purchase price?

5 MR. KRIEGSMAN: Objection to
6 form.

7 A. Yes, I think it was a
8 negotiating point from his perspective.

9 Q. Did he also claim there were
10 tax benefits to Cape Air of doing a
11 transaction as an asset purchase instead of
12 a stock purchase?

13 A. Yes.

14 Q. Was that one of the reasons
15 that Cape Air was willing to pay almost
16 more than 1.3 million dollars more than
17 under the original merger scenario?

18 R. KRIEGSMAN: Objection to
19 form.

20 A. There were several reasons we
21 paid more. One of those were taking into
22 the tax consideration of the assets we were
23 purchasing.

24 Q. What were the other reasons
25 that Cape Air was willing to pay more for

1 M. MIGLIORE

2 an asset purchase rather than the original
3 merger?

4 A. Cape Air really wanted to get
5 this deal done in a timely manner. The
6 negotiations were going for some time. We
7 were moving forward with our business and
8 we really wanted to close on that so from
9 our perspective it wasn't material so in
10 order to get the deal done we went ahead
11 and agreed to this amount.

12 Q. To get the deal done in a
13 timely manner you were willing to pay more?

14 A. Sure.

15 MR. SKIBELL: We're going to
16 enter another exhibit. This is
17 Exhibit 11.

18 (Whereupon, a nonbinding term
19 sheet was marked as Exhibit 11 for
20 identification as of this date by the
21 Reporter.)

22 Q. It's a document that bears the
23 bates stamp HAS0002250 to HAS0002253. Is
24 this the nonbinding term sheet that was
25 entered into the parties following

1 M. MIGLIORE

2 negotiations that we were looking at?

3 A. Yes, it is.

4 Q. Does it reflect a little
5 6.3 million dollar transaction?

6 A. Yes, it does.

7 Q. And you see under one C there's
8 an indication of consideration. The
9 consideration is allocated to different
10 assets. Do you have an understanding as to
11 why that is?

12 A. Why the consideration was
13 breaking out A, B, C or D?

14 Q. Yes.

15 A. Yes, for both tax purpose for
16 us and then we had to identify what the
17 purchase price went towards.

18 Q. Did any of the purchase price
19 go towards a customer list?

20 A. No, they did not.

21 Q. You see under E it says
22 employment agreements? We were discussing
23 earlier the salaries for Mr. Kelly and Miss
24 Collingwood. So, under the term sheet they
25 were to get approximately \$100,000 each

1 M. MIGLIORE

2 year?

3 A. That is correct.

4 Q. That was was originally
5 envisioned at the letter of intent we were
6 looking the earlier?

7 A. The one back in March?

8 Q. Yes.

9 A. Yes, it was in the ballpark.

10 Q. If you look on F it refers to
11 noncompetition agreement. Do you see that?

12 A. Yes.

13 Q. They were to get approximately
14 1.5 million dollars for the noncompete; is
15 that right?

16 A. That is correct.

17 Q. Was that part of the
18 consideration for the transaction?

19 A. Yes, it was.

20 Q. And that was paid directly to
21 Mr. Kelly and Miss Collingwood?

22 A. Yes.

23 Q. Do you know if all of the money
24 due under their contracts was paid to them?

25 MR. KRIEGSMAN: Objection to

1 M. MIGLIORE

2 form.

3 A. Yes, it was.

4 MR. SKIBELL: Let's take a
5 five-minute break and I'll organize
6 the last questions and then Alex can
7 question. Does that work?

8 (Whereupon, a brief break was
9 taken.)

10 MR. SKIBELL: I'm going to
11 enter Exhibit 12.

12 (Whereupon, a due diligence
13 list was marked as Exhibit 12 for
14 identification as of this date by the
15 Reporter.)

16 Q. You'll see this is a document
17 that was produced by Shoreline in this
18 case. It bears the bates stamp SAI004784
19 to SAI004788. So, I'm going to direct your
20 attention to the fourth page that talks
21 about a Shoreline due diligence list.

22 Mr. Migliore, you testified
23 earlier about a due diligence list that
24 Cape Air sent to Shoreline. Do you recall
25 that?

1 M. MIGLIORE

2 A. I do.

3 Q. Does this appear to be the due
4 diligence list that Cape Air sent to
5 Shoreline?

6 A. Yes, it does.

7 Q. This was the information that
8 Cape Air was using to value the company?

9 A. That is correct.

10 Q. So, if you look down you'll see
11 there's a column that's labelled under
12 intellectual property. Do you see that?

13 A. I do.

14 Q. Under that column Cape Air did
15 not request information on a customer list;
16 is that correct?

17 A. That is correct.

18 Q. Is there anywhere in this due
19 diligence list that Cape Air requested
20 information about a customer list?

21 A. Can I get a minute to go
22 through it?

23 Q. Sure.

24 MR. KRIEGSMAN: How is this
25 marked in what you sent over to me?

1 M. MIGLIORE

2 MR. SKIBELL: This is in the
3 information I sent to you. I believe
4 it's labeled as 13.

5 A. That is correct I don't see
6 anything in here that references a customer
7 list.

8 Q. Is this list based off of
9 information that you were provided by John
10 Kelly as to the assets of the company?

11 A. Can you restate that?

12 Q. Is this due diligence list
13 based in part on information John Kelly
14 provided you about what assets Shoreline
15 had?

16 A. We created this due diligence
17 list to give to Shoreline so they can
18 provide us with this information. I'm not
19 sure that question you asked is the way I
20 answered it. They didn't provide us
21 anything. We provided the due diligence
22 list. They provided us the information in
23 the due diligence list.

24 Q. This list is based on the
25 information you believe was important to

1 M. MIGLIORE

2 value Shoreline's business?

3 MR. KRIEGSMAN: Objection.

4 A. That is correct.

5 Q. Cape Air did not request a
6 customer list in connection with valuing
7 Shoreline's business; is that right?

8 A. Yes, that is correct.

9 Q. You will see there's a section
10 called material contracts. Do you see
11 that?

12 A. I do.

13 Q. Under this column is it correct
14 that Cape Air was requesting all material
15 contracts between Shoreline and any other
16 party?

17 A. Yes, that is correct.

18 Q. Am I correct that Cape Air
19 never received any information suggesting
20 there was a contract between Sound Aircraft
21 and Shoreline?

22 MR. KRIEGSMAN: Objection to
23 form.

24 A. I don't specifically recall all
25 the information we received under the

1 M. MIGLIORE

2 material contracts due diligence list.

3 Q. Do you recall receiving any
4 information suggesting or indicating that
5 there was a contract between Shoreline and
6 Sound?

7 A. Yeah, I do not recall that.

8 Q. I'm going to pull this down. I
9 want to go to the period after the
10 transaction closed. Do you recall when it
11 closed approximately?

12 A. The 29th or 30th of December.

13 Q. Am I correct that John Kelly
14 died in July of the following year?

15 A. That is correct.

16 Q. In connection with this
17 transaction did he ever tell you he had
18 cancer?

19 A. Yes, we were aware during the
20 process that he had cancer.

21 Q. When in the process did he
22 inform you that he had cancer?

23 A. I would say the fall.

24 Q. So, was that before the final
25 terms of the deal were reached?

1 M. MIGLIORE

2 A. Yes, it was the fall of 2018.
3 The final deal was late -- the LOI was
4 December five, 2018.

5 Q. Did his untimely passing did
6 that affect Shoreline's business?

7 A. I assume it did. It clearly
8 affected our business.

9 Q. How did it affect your
10 business?

11 A. Well, one of the reasons we
12 were buying Shoreline was for John's
13 knowledge of the sea plane business and
14 clearly having an employment agreement we
15 wanted him to literally run that sea plane
16 business, the maintenance program, just to
17 oversee he it completely. He had much more
18 experience than anybody at Cape Air had
19 here.

20 Q. Are you aware of how
21 Shoreline's business performed after the
22 asset purchase?

23 MR. KRIEGSMAN: Objection.

24 A. I'm not sure how to answer that
25 because there really wasn't a Shoreline

1 M. MIGLIORE

2 business going forward. When we -- we were
3 dealing with all the employees. We were
4 dealing with all the customers going
5 forward so in all essence we were running
6 the Shoreline business with help from John
7 as an employee.

8 Q. Relative to the pre-transaction
9 revenue generated by the business, did that
10 go down following the merger?

11 A. Can you clarify?

12 Q. So, before the merger you did
13 various financial projections from the
14 value of Shoreline's business?

15 A. Before the closing of the deal?

16 Q. Correct. Before the closing of
17 the deal you did various financial analysis
18 of how Shoreline was doing; right?

19 A. Correct.

20 Q. You testified that after the
21 deal you were basically or Cape Air was
22 basically running the business; is that
23 right?

24 A. That is correct. If you were
25 to look at the contract it clearly says we

1 M. MIGLIORE

2 were funding the business for two months
3 January and February.

4 Q. How did the business perform
5 after the transaction relative to how it
6 performed before the transaction?

7 A. Are you asking financially?

8 Q. Yes.

9 A. Financially it was about the
10 same. It was, you know, typically losses
11 money in the first quarter and we knew it
12 was going to lose money in the first
13 quarter.

14 Q. After those first two months,
15 were you still running the business, Cape
16 Air, or was Shoreline running itself?

17 A. No, we were running the
18 business.

19 Q. How did it continue to perform
20 after that initial period of time?

21 A. Similar to previous years.

22 Q. Now, you testified earlier
23 about the Boston to New York route and why
24 that was part of the thinking behind the
25 deal. Do you recall that?

1 M. MIGLIORE

2 A. I do.

3 Q. Did that Boston to New York
4 route come to fruition?

5 A. No, it never did.

6 Q. Did that impact the
7 profitability of the sea plane business?

8 A. Yes, it did.

9 Q. Did COVID impact the
10 profitability of the sea plane business?

11 A. No, we shut down the business
12 prior to COVID. It was almost the same
13 exact time that we shut down the business.
14 I think we announced late February, early
15 March, to the employees that we were not
16 going forward with it.

17 Q. Why did Cape Air shut down the
18 business?

19 A. The main reason for buying
20 Shoreline and for doing the business plan
21 was the Boston to New York market. There
22 were many approvals that we needed to get
23 in Boston Harbor and we were not able to
24 get those approvals and to run a viable
25 business.

1 M. MIGLIORE

2 Q. But the business operations in
3 terms of volume or profitability or amount
4 of customers was the same after the
5 transaction as before the transaction?

6 MR. KRIEGSMAN: Objection to
7 form.

8 A. The amount of business that was
9 generated prior to the deal versus after
10 the deal you're asking?

11 Q. Yes.

12 A. Yeah, in 2019 I think we did
13 roughly the same amount of revenue as they
14 did in previous years from just the I'll
15 say Shoreline business.

16 Q. Were the costs roughly the same
17 after the transaction as before the
18 transaction?

19 A. I think they grew but they were
20 roughly about the same.

21 Q. In terms of profitability the
22 business was roughly a profitable after the
23 transaction as before the transaction?

24 MR. KRIEGSMAN: Objection to
25 form?

1 M. MIGLIORE

2 A. From the analysis we did the
3 business wasn't profitable.

4 Q. Did that change from before the
5 transaction to after the transaction?

6 A. No, it did not.

7 Q. What happened to the assets
8 that Cape Air had?

9 A. Over 2019 -- no, over 2020 it
10 was early once we decided we started to
11 sell the assets.

12 Q. Who did you sell the assets to?

13 A. There were probably various but
14 there was one company that bought the
15 inventory and the aircrafts. If you say it
16 I'll remember it. I forgot right now who
17 it was.

18 Q. Was it Fly the Whale?

19 A. Yes, thank you.

20 Q. Did you offer to sell the
21 business back to Miss Collingwood?

22 A. I don't recall. I don't think
23 so.

24 Q. Do you recall what you got on
25 the assets of Shoreline after you sold it

1 M. MIGLIORE

2 to Fly the Whale?

3 A. How much we received?

4 Q. Yes.

5 A. Specifically, no.

6 Q. Do you recall did Cape Air lose
7 money on the Shoreline transaction?

8 A. Yes.

9 Q. Do you know approximately how
10 much Cape Air lost in the Shoreline
11 transaction?

12 A. A significant amount.

13 Q. Can you give me an idea of what
14 a significant amount means?

15 A. Several million dollars.

16 Q. Is it more than two million
17 dollars?

18 A. Yes.

19 Q. Is it more than four million
20 dollars?

21 A. I don't recall the specific
22 amount on that but it was greater than two.

23 Q. Was it in your mind between two
24 and four million dollars?

25 A. Yes.